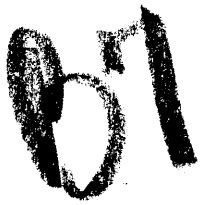

U.S. Department of Justice

Immigration and Naturalization Service

OFFICE OF ADMINISTRATIVE APPEALS
425 Eye Street N.W.
ULLB, 3rd Floor
Washington, D.C. 20536

[redacted]

Public Copy

File: [redacted] Office: Nebraska Service Center Date: MAY 24 2001

IN RE: Petitioner: [redacted]

Petition: Immigrant Petition by Alien Entrepreneur Pursuant to § 203(b)(5) of the Immigration and Nationality Act, 8 U.S.C. 1153(b)(5)

Identifying data deleted to prevent clearly unwarranted invasion of personal privacy

IN BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:
This is the decision in your case. All documents have been returned to the office which originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or the analysis used in reaching the decision was inconsistent with the information provided or with precedent decisions, you may file a motion to reconsider. Such a motion must state the reasons for reconsideration and be supported by any pertinent precedent decisions. Any motion to reconsider must be filed within 30 days of the decision that the motion seeks to reconsider, as required under 8 C.F.R. 103.5(a)(1)(i).

If you have new or additional information which you wish to have considered, you may file a motion to reopen. Such a motion must state the new facts to be proved at the reopened proceeding and be supported by affidavits or other documentary evidence. Any motion to reopen must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and beyond the control of the applicant or petitioner. Id.

Any motion must be filed with the office which originally decided your case along with a fee of $110 as required under 8 C.F.R. 103.7.

FOR THE ASSOCIATE COMMISSIONER,
EXAMINATIONS

Robert P. Wiemann, Acting Director
Administrative Appeals Office

[redacted]

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Associate Commissioner for Examinations on appeal. The appeal will be dismissed.

The petitioner seeks classification as an alien entrepreneur pursuant to § 203(b)(5) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1153(b)(5).

The director determined that the petitioner had failed to demonstrate that he had made a qualifying investment of lawfully obtained funds or that he would create the necessary employment. In her decision, the director included a discussion of the requirements for establishing a new commercial enterprise, but did not clearly indicate her conclusion as to whether or not the petitioner met these requirements.

On appeal, counsel argues that the petitioner has invested the necessary capital, all of which has been placed at risk. Counsel further argues that the petitioner obtained his funds from a lawful source and that it is reasonable that the petitioner will create 10 new jobs.

Section 203(b)(5)(A) of the Act provides classification to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise:

> (i) which the alien has established,
>
> (ii) in which such alien has invested (after the date of the enactment of the Immigration Act of 1990) or, is actively in the process of investing, capital in an amount not less than the amount specified in subparagraph (C), and
>
> (iii) which will benefit the United States economy and create full-time employment for not fewer than 10 United States citizens or aliens lawfully admitted for permanent residence or other immigrants lawfully authorized to be employed in the United States (other than the immigrant and the immigrant's spouse, sons, or daughters).

The record indicates that the petition is based on an investment in a business, Nature and Science, Inc., not located in a targeted employment area for which the required amount of capital invested has been adjusted downward. Thus, the required amount of capital in this case is $1,000,000.

ESTABLISHMENT OF A NEW COMMERCIAL ENTERPRISE

Section 203(b)(5)(A)(i) of the Act states, in pertinent part, that: "Visas shall be made available . . . to qualified immigrants seeking to enter the United States for the purpose of engaging in a new commercial enterprise . . . *which the alien has established* . . . ." (Emphasis added.)

8 C.F.R. 204.6(h) states that the establishment of a new commercial enterprise may consist of the following:

(1) The creation of an original business;

(2) The purchase of an existing business and simultaneous or subsequent restructuring or reorganization such that a new commercial enterprise results; or

(3) The expansion of an existing business through the investment of the required amount, so that a substantial change in the net worth or number of employees results from the investment of capital. Substantial change means a 40 percent increase either in the net worth, or in the number of employees, so that the new net worth, or number of employees amounts to at least 140 percent of the pre-expansion net worth or number of employees. Establishment of a new commercial enterprise in this manner does not exempt the petitioner from the requirements of 8 CFR 204.6(j)(2) and (3) relating to the required amount of capital investment and the creation of full-time employment for ten qualifying employees. In the case of a capital investment in a troubled business, employment creation may meet the criteria set forth in 8 CFR 204.6(j)(4)(ii).

According to the plain language of section 203(b)(5)(A)(i) of the Act, a petitioner must show that he is seeking to enter the United States for the purpose of engaging in a new commercial enterprise that he has established. The alleged new commercial enterprise at issue here is [redacted], Inc. The petitioner is one of the original shareholders and the original Vice President of this corporation.

In her decision, the director cited the regulations regarding the establishment of a new commercial enterprise and noted that [redacted], Inc. purchased a franchise. The director did not, however, conclude one way or the other whether or not the purchase of the franchise constituted the establishment of a new commercial enterprise.

That the franchise company, [redacted], already existed is not determinative. The record indicates that the petitioner entered into the franchise agreement to open a new store not previously in existence. The record contains the franchise agreement, the lease for the property on which the store is located, and an architects letter regarding the renovations made to the property prior to opening the store. There is no indication the petitioner purchased an existing store, assumed an existing franchise agreement, or assumed the lease of an existing business. Therefore, the petitioner has demonstrated that he established a new commercial enterprise by creating an original business.

INVESTMENT OF CAPITAL

8 C.F.R. 204.6(e) states, in pertinent part, that:

Capital means cash, equipment, inventory, other tangible property, cash equivalents, and indebtedness secured by assets owned by the alien

entrepreneur, provided the alien entrepreneur is personally and primarily liable and that the assets of the new commercial enterprise upon which the petition is based are not used to secure any of the indebtedness. ...

Invest means to contribute capital. A contribution of capital in exchange for a note, bond, convertible debt, obligation, or any other debt arrangement between the alien entrepreneur and the new commercial enterprise does not constitute a contribution of capital for the purposes of this part.

8 C.F.R. 204.6(j) states, in pertinent part, that:

(2) To show that the petitioner has invested or is actively in the process of investing the required amount of capital, the petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the capital placed at risk. Evidence of mere intent to invest, or of prospective investment arrangements entailing no present commitment, will not suffice to show that the petitioner is actively in the process of investing. The alien must show actual commitment of the required amount of capital. Such evidence may include, but need not be limited to:

(i) Bank statement(s) showing amount(s) deposited in United States business account(s) for the enterprise;

(ii) Evidence of assets which have been purchased for use in the United States enterprise, including invoices; sales receipts; and purchase contracts containing sufficient information to identify such assets, their purchase costs, date of purchase, and purchasing entity;
(iii) Evidence of property transferred from abroad for use in the United States enterprise, including United States Customs Service commercial entry documents, bills of lading and transit insurance policies containing ownership information and sufficient information to identify the property and to indicate the fair market value of such property;

(iv) Evidence of monies transferred or committed to be transferred to the new commercial enterprise in exchange for shares of stock (voting or nonvoting, common or preferred). Such stock may not include terms requiring the new commercial enterprise to redeem it at the holder's request; or

(v) Evidence of any loan or mortgage agreement, promissory note, security agreement, or other evidence of borrowing which is secured by assets of the petitioner, other than those of the new commercial enterprise, and for which the petitioner is personally and primarily liable.

The regulations provide that a petition must be accompanied by evidence that the petitioner has placed the required amount of capital at risk for the purpose of generating a return on the

capital placed at risk. A mere deposit into a corporate money-market account, such that the petitioner himself still exercises sole control over the funds, hardly qualifies as an active, at-risk investment. Matter of Ho, I.D. 3362 (Assoc. Comm., Examinations, July 31, 1998) at 5. Even if a petitioner transfers the requisite amount of money, he must establish that he placed his own capital at risk. Spencer Enterprises, Inc. v. United States, CIV-F-99-6117, 27 (E.D. Calif. 2001)(citing Matter of Ho).

In his initial brief, counsel asserts the Service denied a previous petition filed by the petitioner because he had not transferred a substantial portion of the required investment amount to the corporation. Counsel asserts that as of the date of filing the instant petition, the petitioner has now transferred the funds necessary to open two additional stores as contemplated in the petitioner's business plan.

In support of the petition, the petitioner submitted a copy of a decision denying a previous petition filed by the petitioner due to the petitioner's failure at that time to have placed more than $275,000 at risk. In that decision, the director noted that while the business plan called for the opening of two new stores, "no evidence was submitted to validate this expansion, ie., [sic] the purchase of an additional franchise, with inventory, and the lease or construction of a secondary facility."

The petitioner also submitted a revised business plan projecting the opening of two new franchise stores, one six months after the petitioner receives an immigrant visa, and the other a year later. The business plan projects a required investment of $310,000 in the initial store and an additional $695,000 in the aggregate for store number two and three. As evidence of his investment, the petitioner submitted a letter from [redacted] confirming the receipt of a $10,000 deposit from [redacted], Inc. on June 16, 1995 and the receipt of an additional $15,000 on September 15, 1995;[1] an affidavit from the petitioner's brother, [redacted], asserting the petitioner contributed all the funds to the corporation and [redacted] contributed services only; a bank letter from Al Bank Al Saudi Al Fransi confirming the issuance of a $75,000 check to [redacted] at the request of "[redacted]," an April 5, 1997 check for $75,000 issued by Al Bank Al Saudi Al Fransi to [redacted], Inc.; a March 31, 1997 check issued by Saudi American Bank to [redacted] Inc. for $476,202; an April 17, 1997 check issued on an account owned jointly by the petitioner and [redacted] to [redacted] Inc. for $180,000; and a receipt for the deposit of $180,000.

On March 6, 1998, the director requested evidence that the additional funds were actually deposited in a corporate account, corporate tax returns, and evidence of the issuance of shares.

In response, the petitioner submitted a bank letter dated April 15, 1997, from Fidelity Investments acknowledging the receipt of two checks issued to [redacted], Inc.; an

[1] While the letter asserts the second check was received September 15, 1996, the date the agreement was signed; the agreement is actually dated September 15, 1995. As the store appears to have been in operation in 1995, the "1996" is presumed to be an error.

April 1997 Fidelity Investment statement for [redacted], Inc. reflecting a deposit of $476,202.19 on April 16, 1997, a deposit of $75,000 on April 16, 1997, and a deposit of $180,000 on April 18, 1997; 1995 and 1996 corporate tax returns which do not include schedule L; and stock certificates reflecting 100 shares issued to the petitioner and 100 shares issued to [redacted].

The record also contains:

1. A letter from architect Mark Johnson asserting he received $7,525.72 from [redacted] as compensation for his services;

2. The following cancelled checks issued by [redacted]: to [redacted] Inc. for $15,000 on September 15, 1995, to [redacted] for $27,754 on October 10, 1995, and to Mark Johnson for $3,500 on October 14, 1995; and

3. The following checks issued by [redacted]: to Federal Express for $1,960 on June 5, 1995, to [redacted]. for $10,000 on June 20, 1995, and to [redacted] for $61.62 on June 19, 1995.

The director concluded that the petitioner had not established any start-up expenses beyond the $25,000 franchise fee as the record did not establish the cost of the initial inventory. Citing Matter of Ho, the director concluded that the "bulk of the capital" had been placed in a corporate investment account and, thus, was not at risk.

On appeal, counsel attempts to distinguish Matter of Ho, noting that the petitioner in that case had not committed himself to any business operations. Counsel asserts that the petitioner in this case is already operating one store and is merely waiting for his immigrant visa before opening the two remaining stores. The petitioner submits numerous cancelled checks and an addendum to the lease indicating rent of eight percent of gross sales.

First, the record contains no evidence of the petitioner transferring any personal funds to the corporation prior to 1997. Counsel consistently refers to the director's 1996 decision regarding the petitioner's first petition in which the director appears to concede the petitioner had invested $250,000 at that time. Each petition, however, is adjudicated based on the evidence submitted in support of that petition. The record does not support an investment of $250,000 prior to 1997. While [redacted] asserts the petitioner contributed all the funds for the business and [redacted] only contributed services for his shares, the record reflects that the down payment for the franchise fee was paid from [redacted] account, number 200148642. The record contains no evidence the petitioner transferred any funds to that account.[2]

[2] The record does contain bank statements for some of the petitioner's accounts addressed to the petitioner in care of [redacted] or even owned jointly with [redacted]. None of these accounts, however, are account number [redacted].

Even if we were to accept that the petitioner funded all of the capital expenses, the record does not support the claimed start-up costs of $310,000. The business plan indicates the following capital investment costs for the initial store: $175,000 for fixtures and leasehold improvements, $15,000 for design services, $25,000 for a franchise fee, $60,000 for inventory, $20,000 for working capital, and $15,000 for equipment.

The record supports the $25,000 franchise fee. The architect's letter, however, indicates that he received only $7,525.72 for his services, not $15,000. In addition, the claimed inventory costs are not supported by the record. The earliest invoices in the record are from December 1996, and cannot establish the initial inventory costs. While the petitioner submitted numerous cancelled checks for November 1995 through January 1996, they only amount to approximately $48,768 (beyond those which are issued to the landlord and represent rent payments). Further, [redacted], Inc.'s Form 1120 for 1995 (July 17, 1995 through June 30, 1996) reveals the cost of the goods sold during that period amounted to only $47,041. Thus, the petitioner has not established the $60,000 inventory costs claimed.

Moreover, the petitioner has not established his renovation, improvement, or equipment costs. He failed to submit the contract for the claimed improvements, cancelled checks used to pay the improvements. It is not known how many of the cancelled checks discussed above were for equipment purchases and, as discussed above, the checks only amount to $48,768. Finally, the record does not include the certified Form 4562 from the corporate tax return which might reflect depreciated and/or amortized start-up costs other than inventory.

In light of the above, the petitioner has not established all of the claimed start-up costs. While the record does not preclude the possibility of additional capital expenses, it is the petitioner's burden to support his claim of $310,000 of start-up expenses.

Regarding the funds for the proposed stores, the petitioner has not demonstrated that those funds were at risk at the time of filing. The business plan projects the following capital expenses for each of the two proposed stores: $200,000 for fixtures, leasehold improvements, $20,000 for design services, $22,500 for the franchise fee, $65,000 for inventory, $25,000 for working capital, and $15,000 for equipment. As the claimed expenses for the initial store are unsupported, the credibility of the projected capital expenses is diminished. Further, as the record contains no evidence that the petitioner has chosen or begun researching the location for the new stores, it is not clear how he can project the start-up costs. As noted above, the director advised the petitioner in her first decision that the petitioner had failed to "validate" the proposed expansion. The petitioner is no more committed to the two proposed stores than he was before. Where a business is grossly overcapitalized, it cannot be concluded that all the funds contributed were placed at risk.

Moreover, [redacted], Inc. is not committed to opening the proposed stores. It is acknowledged that, unlike the petitioner in Matter of Ho, this petitioner has an operating business. Regardless, the case stands for the proposition that all the funds must be at risk. Matter of Ho states:

[redacted]

> Simply formulating an idea for future business activity, without taking meaningful concrete action, is similarly insufficient for a petitioner to meet the at-risk requirement.

Where more than two-thirds of the claimed investment is placed in a corporate money market account for projects to which the petitioner is not irrevocably committed, it cannot be said that all the funds are at risk.

In light of the above, the petitioner has not established a qualifying investment.

SOURCE OF FUNDS

8 C.F.R. 204.6(j) states, in pertinent part, that:

> (3) To show that the petitioner has invested, or is actively in the process of investing, capital obtained through lawful means, the petition must be accompanied, as applicable, by:
>
> (i) Foreign business registration records;
>
> (ii) Corporate, partnership (or any other entity in any form which has filed in any country or subdivision thereof any return described in this subpart), and personal tax returns including income, franchise, property (whether real, personal, or intangible), or any other tax returns of any kind filed within five years, with any taxing jurisdiction in or outside the United States by or on behalf of the petitioner;
>
> (iii) Evidence identifying any other source(s) of capital; or
>
> (iv) Certified copies of any judgments or evidence of all pending governmental civil or criminal actions, governmental administrative proceedings, and any private civil actions (pending or otherwise) involving monetary judgments against the petitioner from any court in or outside the United States within the past fifteen years.

A petitioner cannot establish the lawful source of funds merely by submitting bank letters or statements documenting the deposit of funds. Matter of Ho, supra, at 6; Matter of Izumii, I.D. 3360 (Assoc. Comm., Examinations July 31, 1998) at 26. Without documentation of the path of the funds, the petitioner cannot meet his burden of establishing that the funds are his own funds. Id. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. Matter of Treasure Craft of California, 14 I&N Dec. 190 (Reg. Comm. 1972). These "hypertechnical" requirements serve a valid government interest: confirming that the funds utilized are not of suspect origin. Spencer Enterprises, Inc. v. United States, supra, (affirming a finding that a petitioner had

failed to establish the lawful source of her funds due to her failure to designate the nature of all of her employment or submit five years of tax returns).

In support of the petition, the petitioner submitted a personal financial statement, 1992 and 1993 Schedules K-1 from another business, [redacted], and letters from the Saudi American Bank. In response to the director's request for additional documentation, the petitioner submitted letters purportedly discussing his architectural services in Saudi Arabia.

The director noted that all of the evidence from Saudi Arabia, including the letters about architectural services and bank letters regarding bank accounts and bank drafts, refer to "[redacted]," except for one letter which refers to "[redacted]." The director concluded that the petitioner had not established that he is one and the same as [redacted] or [redacted].

On appeal, counsel argues the misspelling of "[redacted]" on one letter should not taint the record, that the petitioner's name is [redacted], and that official documents in the United States reversed his first and middle names. The petitioner submits a diploma in architecture and Certificate of Election as Fellow of the Indian Institute of Architects issued to [redacted].

The schedules K-1 from the petitioner's other U.S. business fail to reflect income which could account for the accumulation of $1,000,000 and the United States accounts do not reflect more than $200,000. As such, the petitioner must establish that the majority of his funds came from lawful income outside the United States.

It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence, and attempts to explain or reconcile such inconsistencies, absent competent objective evidence pointing to where the truth, in fact, lies, will not suffice. Matter of Ho, 19 I&N Dec. 582, 591-92 (BIA 1988). The petitioner listed his name on the petition as "Masood S. Ahmed." If documents in the United States reflect "[redacted]" as his first name, it is because that is the way he represented himself. The record does not contain any evidence, such as his passport, a letter from the Saudi bank or even one of his alleged Saudi customers, confirming that "[redacted]" and "[redacted] are one and the same person. Therefore, the petitioner has not resolved the inconsistencies regarding the source and ownership of the funds transferred from abroad.

Furthermore, the petitioner has not demonstrated the path of the funds. As discussed above, the record contains no evidence that the petitioner transferred any funds to the corporation prior to 1997. As such, the source of the funds spent by the corporation is unknown. The record contains two bank checks, one for $476,202.19 from Saudi American Bank and a second for $75,000 from Al Bank Al Saudi Al Fransi. The petitioner submitted a letter from Al Bank Al Saudi Al Fransi indicating "[redacted] purchased the $75,000 bank check. While counsel referred to an April 2, 1997 letter from Saudi American Bank confirming the petitioner purchased the $476,202.19 check, that letter is not in the record.

Although the director specifically noted the absence of the letter, the petitioner did not submit another copy or a new bank letter on appeal. The source of the $476,202.19, therefore, is unknown.

In light of the above, the petitioner has not established the path or lawful source of the funds allegedly invested.

EMPLOYMENT CREATION

8 C.F.R. 204.6(j)(4)(i) states:

> To show that a new commercial enterprise will create not fewer than ten (10) full-time positions for qualifying employees, the petition must be accompanied by:
>
> (A) Documentation consisting of photocopies of relevant tax records, Form I-9, or other similar documents for ten (10) qualifying employees, if such employees have already been hired following the establishment of the new commercial enterprise; or
>
> (B) A copy of a comprehensive business plan showing that, due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired.

8 C.F.R. 204.6(e) states, in pertinent part:

> *Full-time employment* means employment of a qualifying employee by the new commercial enterprise in a position that requires a minimum of 35 working hours per week.
>
> *Qualifying employee* means a United States citizen, a lawfully admitted permanent resident, or other immigrant lawfully authorized to be employed in the United States including, but not limited to, a conditional resident, a temporary resident, an asylee, a refugee, or an alien remaining in the United States under suspension of deportation. This definition does not include the alien entrepreneur, the alien entrepreneur's spouse, sons, or daughters, or any nonimmigrant alien.

Finally, 8 C.F.R. 204.6(g)(2) relates to multiple investors and states, in pertinent part:

> The total number of full-time positions created for qualifying employees shall be allocated solely to those alien entrepreneurs who have used the establishment of the new commercial enterprise as the basis of a petition on Form I-526. No

[redacted]

> allocation need be made among persons not seeking classification under section 203(b)(5) of the Act or among non-natural persons, either foreign or domestic. The Service shall recognize any reasonable agreement made among the alien entrepreneurs in regard to the identification and allocation of such qualifying positions.

Full-time employment means continuous, permanent employment. See Spencer Enterprises, Inc. v. United States, supra, (finding this construction not to be an abuse of discretion.)

On the Form I-526, the petitioner indicated he had created eight jobs and would create an additional 10-12 jobs. The petitioner submitted a business plan indicating the first store had one manager, three other full-time employees, and two part-time employees. The plan further indicated the proposed two stores would each require the same staff. The petitioner also submitted eight Forms W-2 for 1995.

In response to the director's request for additional documentation, the petitioner submitted 12 Forms W-2 for 1997, Forms I-9, a Form 941 which appears to be for the third quarter of 1996, and a payroll form for August 29 through September 11 of an unspecified year reflecting five employees, none of whom worked at least 70 hours.

Pursuant to 8 C.F.R. 204.6(j)(4)(i)(B), if the employment-creation requirement has not been satisfied prior to filing the petition, the petitioner must submit a "comprehensive business plan" which demonstrates that "due to the nature and projected size of the new commercial enterprise, the need for not fewer than ten (10) qualifying employees will result, including approximate dates, within the next two years, and when such employees will be hired." To be considered comprehensive, a business plan must be sufficiently detailed to permit the Service to reasonably conclude that the enterprise has the potential to meet the job-creation requirements.

A comprehensive business plan as contemplated by the regulations should contain, at a minimum, a description of the business, its products and/or services, and its objectives. Matter of Ho, supra. Elaborating on the contents of an acceptable business plan, Matter of Ho states the following:

> The plan should contain a market analysis, including the names of competing businesses and their relative strengths and weaknesses, a comparison of the competition's products and pricing structures, and a description of the target market/prospective customers of the new commercial enterprise. The plan should list the required permits and licenses obtained. If applicable, it should describe the manufacturing or production process, the materials required, and the supply sources. The plan should detail any contracts executed for the supply of materials and/or the distribution of products. It should discuss the marketing strategy of the business, including pricing, advertising, and servicing. The plan should set forth the business's organizational structure and its personnel's experience. It should explain the business's staffing requirements and contain a

timetable for hiring, as well as job descriptions for all positions. It should contain sales, cost, and income projections and detail the bases therefor. Most importantly, the business plan must be credible.

The director concluded the petitioner had yet to hire 10 full-time employees and his business plan was insufficient. On appeal, counsel asserts that the business plan projections for employment are based on the petitioner's experience regarding his store already in operation and are more than mere speculation.

The Forms W-2 do not reflect the total number of employees working during any one pay period. That [redacted], Inc. issued 12 W-2s in 1997 and eight in 1995 in no way implies the corporation had eight or 12 employees continuously throughout those years. Of all the W-2s submitted for either year, only the wages provided on the 1997 W-2 of the petitioner's sister-in-law reflects full-time year round employment at minimum wage. As stated above, the payroll record reflects only five employees during the pay period covered, none of whom worked at least 70 hours.

As the petitioner has failed to demonstrate that the initial store is supporting four full-time employees as claimed, it is not reasonable to conclude the two new stores will support four full-time employees. Moreover, as stated above, the petitioner has not demonstrated that he is irrevocably committed to opening two new stores and has not even demonstrated the feasibility of doing so through research into possible locations and negotiations with NOTS, Inc. Therefore, we concur that the petitioner is merely speculating about his chances of opening two new stores and creating eight new full-time employees.

For all of the reasons set forth above, considered in sum and as alternative grounds for denial, this petition cannot be approved.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.